

REMARKS/ARGUMENTS

In the Office action dated February 21, 2007, the examiner maintained the requirement to restrict the application to a single invention between invention I, including claims 1-11 and invention II, including claim 12. In maintaining this requirement, the examiner asserts that the compound of Formula 2 is not made by any of claims 1-11, but rather is one of the starting compounds of claim 1. Office action, pages 2-3. However, claim 1 clearly recites a process for *producing* 4-(1H-1,2,4-triazol-1-ylmethyl) benzonitrile of Formula 2. The process includes reacting a compound of *Formula 4* with a compound of *Formula 3* in the presence of a suitable solvent. The compound of Formula 2 is obtained by adding demineralized water and extracting with dichloromethane, distilling out the organic layer and crystallizing the same to *obtain* the compound of Formula 2. Accordingly, the compound of Formula 2 is the product produced by the process recited in claim 1, and is not a starting compound in that process.

The examiner also asserts that claims 1 and 12 recite different final products and different reactants. However, both claim 1 and 12 recite the same process for producing a compound of Formula 2. Although claim 12 further recites the use of the resulting compound of Formula 2 in the preparation of a compound of Formula 1, the compound of Formula 2 is used in that process as a useful intermediate. Also, because claim 12 depends from claim 1, claim 12 includes all the limitations of that claim, including the reactants used to form the compound of Formula 2. Therefore, the examiner's assertion that the processes recited in claims 1 and 12 use different reactants is erroneous. As such, applicant submits that the requirement to restrict between claims 1-11 and claim 12 is improper.

Turning to the substantive claim rejections, the examiner rejected claims 1-11 under 35 U.S.C. §103(a) as allegedly obvious over Bowman, et al. (U.S. Patent No. 5,473,078). In making this rejection, the examiner notes that Bowman discloses reacting α -bromo-4-tolunitrile with 1,2,4-triazole to arrive at the compound of Formula 2. While Bowman does disclose the use of 1,2,4-triazole in this reaction, Bowman fails to teach or suggest the use of a *salt of 1,2,4-triazole* in the reaction, as recited in independent claim 1. As disclosed in the present

application, reactions using 1,2,4-triazole, as disclosed in Bowman, are highly non-selective and result in the production of about 50% of the undesired side product, 4-(1H-1,3,4-triazol-1-ylmethyl) benzonitrile. This production of the undesired side product requires its separation through column chromatography, a process that is highly disadvantageous, especially in large scale production of the compound of Formula 2. See specification, paragraphs 0005 and 0006.

In contrast, the present claims recite the use of a *salt* of 1,2,4-triazole in the reaction. The reaction recited in the present claims is highly selective, having about 96% selectivity for the desired product, i.e. the compound of Formula 2. This eliminates the need to perform column chromatography to separate out the undesired side product. See specification, paragraph 0007. Accordingly, the processes recited in independent claims 1-11 are not obvious over Bowman.

In addition, although the examiner admits that Bowman fails to disclose the reaction temperature recited in the present claims, the examiner asserts that the claimed temperature range is an obvious modification that would have been available to one of ordinary skill in the art. See Office action, page 5. However, as noted above, Bowman also fails to teach or suggest the use of a salt of 1,2,4-triazole, rendering the present claims non-obvious over Bowman. Additionally, reaction conditions, such as temperature, depend on the reactants, reagents and solvents used in the reaction. Use of different reactants, reagents or solvents may necessitate different reaction parameters, such as pressure and temperature, based on solubility in the reaction medium. To that end, applicant notes that the solvents used in the present application included tetrahydrofuran and dimethylformamide, whereas the solvents used in Bowman included acetone and a mixture of chloroform and acetonitrile. In addition, the product in Bowman was isolated using chromatographic methods, whereas the product in the present application was purified using isopropyl alcohol, toluene or diisopropylether. Given the differences in reactants, reagents and solvents between the process of the present application and that of Bowman, the examiner's assertion that the reaction temperature would be obvious is erroneous. Accordingly, the processes recited in independent claim 1, and all claims dependent therefrom, including claims 2-12, are not obvious and are allowable over Bowman.

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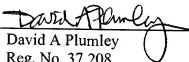
Reply to Office action of February 21, 2007

Claims 1-12 remain pending in this application. The examiner has withdrawn claim 12 from consideration despite applicant's traversal of the restriction requirement. Applicant continues to assert that the restriction requirement is improper. In view of the above remarks, applicant submits that all of pending claims 1-12 are in condition for allowance. Applicant therefore respectfully requests a timely indication of allowance. However, if there are any remaining issues that can be addressed by telephone, applicant invites the examiner to contact applicant's counsel at the number indicated below.

Respectfully submitted,

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